

By: Kleinschmidt

H.B. No. 176

A BILL TO BE ENTITLED

1 AN ACT
2 relating to protection of the right to keep and bear arms within the
3 State of Texas.

4 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

5 SECTION 1. This Act shall be known as the Second Amendment
6 Preservation Act.

7 SECTION 2. The legislature finds and declares the
8 following:

9 (1) The legislature is firmly resolved to support and
10 defend the United States Constitution against every aggression,
11 either foreign or domestic, and oppose every infraction of the
12 principles that constitute the basis of the union of the states
13 because only a faithful observance of those principles can secure
14 the nation's existence and the public's happiness.

15 (2) Acting through the United States Constitution, the
16 people of the several states created the federal government to be
17 the people's agent in the exercise of a few defined powers, while
18 reserving to the state governments the power to legislate on
19 matters that concern the lives, liberties, and properties of
20 citizens in the ordinary course of affairs.

21 (3) The limitation of the federal government's power
22 is affirmed under the Tenth Amendment to the United States
23 Constitution, which defines the total scope of federal power as
24 being that which has been delegated by the people to the federal

1 government, and all power not delegated to the federal government
2 in the United States Constitution is reserved to the states or to
3 the people.

4 (4) If the federal government assumes powers that the
5 people did not grant to the federal government in the United States
6 Constitution, the federal government's acts are unauthoritative,
7 void, and of no force.

8 (5) The several states respect the proper role of the
9 federal government, but reject the proposition that such respect
10 requires unlimited submission. If the federal government, created
11 by compact among the states, was the exclusive or final judge of the
12 extent of the powers granted to the federal government by the states
13 through the constitution, the federal government's discretion, and
14 not the constitution, would necessarily become the measure of those
15 powers. To the contrary, as in all other cases of compacts among
16 powers having no common judge, each party has an equal right to
17 judge whether infractions of the compact have occurred, as well as
18 to determine the mode and measure of redress. Although the states
19 have granted supremacy to laws and treaties made pursuant to the
20 powers granted in the constitution, that supremacy does not extend
21 to various federal statutes, executive orders, administrative
22 orders, court orders, rules, regulations, and other actions that
23 restrict or prohibit the manufacture, ownership, and use of
24 firearms, firearm accessories, or firearm ammunition exclusively
25 within the borders of Texas. Such federal actions exceed the powers
26 granted to the federal government except to the extent that they are
27 necessary and proper for governing the United States armed forces

1 or militia forces actively employed in the service of the armed
2 forces.

3 (6) The people of the several states have, in Article
4 I, Section 8, of the United States Constitution, given Congress the
5 power "to regulate Commerce with foreign Nations, and among the
6 several States," but "regulating commerce" does not include the
7 power to limit citizens' right to keep and bear arms in defense of
8 the citizens' families, neighbors, persons, or property, or to
9 dictate as to what type of arms and accessories law-abiding,
10 mentally competent Texans may buy, sell, exchange, or otherwise
11 possess within the borders of this state.

12 (7) The people of the several states have, in Article
13 I, Section 8, of the United States Constitution, also granted
14 Congress the power to "lay and collect Taxes, Duties, Imposts and
15 Excises, to pay the Debts and provide for the common Defence and
16 general Welfare of the United States" and to "make all Laws which
17 shall be necessary and proper for carrying into Execution the . . .
18 Powers vested by [the] Constitution in the Government of the United
19 States, or in any Department or Officer thereof." These
20 constitutional provisions merely identify the means by which the
21 federal government may execute the federal government's limited
22 powers and ought not to be construed to grant unlimited powers
23 because to do so would destroy the carefully constructed
24 equilibrium between the federal and state governments.
25 Consequently, the legislature rejects any claim that the taxing and
26 spending powers of Congress can be used to diminish in any way the
27 right of the people to keep and bear arms.

1 (8) The people of Texas have vested the legislature
2 with the authority to regulate the manufacture, possession,
3 exchange, and use of firearms within the borders of this state,
4 subject only to the limits imposed by the Second Amendment to the
5 United States Constitution and Section 23, Article I, Texas
6 Constitution.

7 (9) The legislature strongly encourages responsible
8 gun ownership, including parental supervision of minors in the
9 proper use, storage, and ownership of all firearms, the prompt
10 reporting of stolen firearms, and the proper enforcement of all
11 state gun laws. The legislature condemns any unlawful transfer of
12 firearms and the use of any firearm in any unlawful activity.

13 SECTION 3. Title 5, Civil Practice and Remedies Code, is
14 amended by adding Chapter 115 to read as follows:

15 CHAPTER 115. PROTECTION OF RIGHT TO KEEP AND BEAR ARMS

16 Sec. 115.001. DEFINITIONS. In this chapter:

17 (1) "Government agency" means:

18 (A) this state or a municipality or other
19 political subdivision of this state; and

20 (B) any agency of this state or a municipality or
21 other political subdivision of this state, including a department,
22 bureau, board, commission, office, agency, council, or public
23 institution of higher education.

24 (2) "Law-abiding citizen" means an individual who:

25 (A) is legally present in this state; and

26 (B) may, under the laws of this state, possess a
27 firearm.

1 (3) "Right to keep and bear arms" means the right
2 guaranteed by the Second Amendment to the United States
3 Constitution and Section 23, Article I, Texas Constitution.

4 Sec. 115.002. CERTAIN FEDERAL LAW REGULATING FIREARMS
5 INVALID. A federal law, including a statute, an executive,
6 administrative, or court order, or a rule, that infringes on a
7 law-abiding citizen's right to keep and bear arms under the Second
8 Amendment to the United States Constitution or Section 23, Article
9 I, Texas Constitution, is invalid and not enforceable in this
10 state. A federal law that infringes on a law-abiding citizen's
11 right to keep and bear arms includes a law that:

12 (1) imposes a tax, fee, or stamp on a firearm, firearm
13 accessory, or firearm ammunition that is not common to all other
14 goods and services and may be reasonably expected to create a
15 chilling effect on the purchase or ownership of those items by a
16 law-abiding citizen;

17 (2) requires the registration or tracking of a
18 firearm, firearm accessory, or firearm ammunition or the owners of
19 those items that may be reasonably expected to create a chilling
20 effect on the purchase or ownership of those items by a law-abiding
21 citizen;

22 (3) prohibits the possession, ownership, use, or
23 transfer of a firearm, firearm accessory, or firearm ammunition by
24 a law-abiding citizen; and

25 (4) orders the confiscation of a firearm, firearm
26 accessory, or firearm ammunition from a law-abiding citizen.

27 Sec. 115.003. DUTIES OF COURTS AND LAW ENFORCEMENT

1 AGENCIES; ENFORCEMENT BY GOVERNMENT EMPLOYEES, OFFICIALS, AND
2 AGENCIES PROHIBITED. (a) Each state court and law enforcement
3 agency of this state shall protect a law-abiding citizen's right to
4 keep and bear arms.

5 (b) A government agency or an employee or an official of a
6 government agency may not enforce a federal law described by
7 Section 115.002.

8 Sec. 115.004. REMEDIES. (a) A person who knowingly
9 violates Section 115.003(b) is liable under this section to a
10 law-abiding citizen whose right to keep and bear arms was infringed
11 by the person.

12 (b) A law-abiding citizen described by Subsection (a) may
13 recover:

14 (1) declaratory relief under Chapter 37;

15 (2) injunctive relief to prevent the threatened
16 violation or continued violation;

17 (3) compensatory damages for pecuniary and
18 nonpecuniary losses; and

19 (4) reasonable attorney's fees, court costs, and other
20 reasonable expenses required in bringing the action.

21 Sec. 115.005. NOTICE; RIGHT TO ACCOMMODATE. (a) A claimant
22 may not bring an action to assert a claim under this chapter unless,
23 60 days before bringing the action, the claimant gives to the person
24 who violated Section 115.003(b), by certified mail, return receipt
25 requested, written notice:

26 (1) that the person has taken or proposes to take an
27 enforcement action infringing on the claimant's right to keep and

1 bear arms; and

2 (2) of the particular enforcement action giving rise
3 to the infringement.

4 (b) Notwithstanding Subsection (a), a claimant may, within
5 the 60-day period established by Subsection (a), bring an action
6 for declaratory or injunctive relief and associated attorney's
7 fees, court costs, and other reasonable expenses, if:

8 (1) infringement on the claimant's right to keep and
9 bear arms is imminent; and

10 (2) the claimant was not informed and did not
11 otherwise have knowledge of the enforcement action in time to
12 reasonably provide the notice.

13 (c) A person who receives a notice under Subsection (a) may
14 cure the infringement on the claimant's right to keep and bear arms.

15 (d) A claimant with respect to whom an infringement on the
16 claimant's right to keep and bear arms has been cured may not bring
17 an action under Section 115.004.

18 Sec. 115.006. ONE-YEAR LIMITATIONS PERIOD. (a) A claimant
19 must bring an action to assert a claim for damages under this
20 chapter not later than one year after the date the claimant knew or
21 should have known of the infringement on the claimant's right to
22 keep and bear arms.

23 (b) Mailing notice under Section 115.005 tolls the
24 limitations period established under this section until the 75th
25 day after the date on which the notice was mailed.

26 Sec. 115.007. SOVEREIGN AND GOVERNMENTAL IMMUNITY WAIVED;
27 NO OFFICIAL IMMUNITY. (a) Sovereign and governmental immunity to

1 suit and from liability is waived and abolished to the extent of
2 liability created by Section 115.004, and a claimant may sue a
3 government agency for damages allowed by that section.

4 (b) The affirmative defense of official immunity is not
5 available to an employee or official sued under Section 115.004.

6 (c) Notwithstanding Subsection (a), this chapter does not
7 wave or abolish sovereign immunity to suit and from liability
8 under the Eleventh Amendment to the United States Constitution.

9 SECTION 4. This Act applies only to an infringement on the
10 right to keep and bear arms that occurs on or after the effective
11 date of this Act.

12 SECTION 5. This Act takes effect September 1, 2015.